

U.S. Serial No. 10/748,884

Response to the Restriction of April 21, 2006

REMARKS

Claims 1-30 are pending and at issue in the above identified patent application. Of the claims at issue, claims 1, 9, 16, and 22 are independent. The examiner alleges claims 1-30 are directed to six distinct Species. Specifically, the examiner requires a restriction election between figures 3-6 (Group I), figures 7-10 (Group II), figures 11-13 (Group III), figures 14-16 (Group IV), figures 17-19 (Group V), and figures 20-24 (Group VI). As set forth in detail below, without denying that the claims are patentably distinct, the applicant *traverses* this species restriction requirement for at least the following reasons.

Election/Restrictions

As an initial matter, the applicant note that the examiner has not provided any rationale or information regarding the reason for restriction, and therefore, the restriction is necessarily improper and must be withdrawn. In particular, the examiner simply concludes that "this application contains claims directed to the following patentably distinct species," without providing any reasons to support that conclusion.

It is well established, however, that the first criteria for making a proper restriction is that the inventions must be independent or distinct. To that end "[e]xaminers must provide reasons and/or examples to support conclusions..." (M.P.E.P. § 803; emphasis added).

In the present action, the examiner has provided no reason and/or example as to why each of the alleged species is independent or distinct. As such, the Office action does not put the applicant in a position to meaningfully address the election requirement because the action is devoid of rationale regarding the required criteria for restriction. Therefore, the Office action clearly fails to meet the first requirement of M.P.E.P. § 803 and, on this basis alone, the restriction requirement must be withdrawn.

Furthermore, the M.P.E.P. clearly and unequivocally states that there are two criteria which must be met for a requirement for restriction to be proper: (1) the inventions must be

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independent or distinct as claimed; and, (2) there must be a serious burden on the examiner if restriction is not required. (M.P.E.P. § 803). In this instance, regardless of whether the examiner may conclude that the species are independent or distinct, the examiner fails to allege, let alone demonstrate that a serious burden would be placed on the examiner if election were not required. Accordingly, the applicant respectfully submits that no matter what the rationale for independent or distinct species, there can be no serious burden upon the examiner in reviewing all of the claims simultaneously, because the examiner will likely be searching a single class/subclass in full anyway in reference to any elected one of the species.

If there is a serious burden in the present application, it is on the assignee of this application as a result of this species restriction requirement. Unless the restriction requirement is withdrawn, the assignee must not only prosecute as many as six separate applications, which multiplies the cost and time of obtaining protection for the inventive subject matter, but it must also then pay separate maintenance fees for each of the issued patents. It is respectfully submitted that the burden of the expense incurred in order to obtain six different patents and the further expense in maintaining those patents suffered by the taxpayer, far outweigh any possible burden the Patent Office may incur as a result of simultaneously examining the claims of this application.

In summary, the Office action fails meet any of the requirements of M.P.E.P. § 803. In view of the following mandate, this failure renders the restriction requirement improper:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

(M.P.E.P. § 803; emphasis added). Therefore, the applicant requests that the requirement for restriction be withdrawn.

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Election under 37 C.F.R. § 1.143

Subject to the traversal of the restriction requirement and in accordance with the requirements of 37 C.F.R. § 1.143, the applicant hereby provisionally elects Group VI (Figures 20-24). As noted by the examiner, each of independent claims 1 and 9 is generic to all alleged species. Furthermore, claims 1-21 each read upon the elected Group VI.

Conclusion

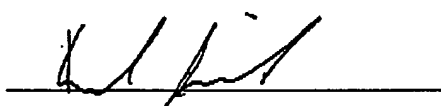
In making this provisional election, the applicants do not intend to abandon the scope of non-elected claims, but may pursue the non-elected claims in a divisional application if the restriction requirement is not withdrawn upon reconsideration.

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,

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